



Northern
Ireland
Office

**Code of Practice
(Northern Ireland) for the
authorisation and exercise
of stop and search powers
relating to Sections 43,
43A and 47A of, and
Schedule 6B to, the
Terrorism Act 2000**

May 2012

Code of Practice (Northern Ireland) for the Authorisation and Exercise of Stop and Search Powers Relating to Sections 43, 43A and 47A of, and Schedule 6B to, the Terrorism Act 2000

Terrorism Act 2000

Presented to Parliament pursuant to Section 47AB (1)(a)
of the Terrorism Act 2000

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Code of Practice on Terrorism Stop and Search Powers in the Terrorism Act 2000 for Northern Ireland

1 This Code of Practice deals with the exercise by police officers of the following powers of stop and search:

- section 43 of the Terrorism Act 2000
- section 43A of the Terrorism Act 2000
- section 47A of the Terrorism Act 2000
- schedule 6B to the Terrorism Act 2000

1.2 THIS CODE RELATES TO THE USE OF STOP AND SEARCH POWERS EXERCISED BY THE POLICE UNDER THE TERRORISM ACT 2000. THIS CODE DOES NOT APPLY TO THE EXERCISE OF OTHER TERRORISM OR SECURITY POWERS UNDER OTHER LEGISLATION.

1.3 This Code applies to the following powers of stop and search:

- the power under section 43 of the Terrorism Act 2000 for a constable to stop and search a person whom he or she reasonably suspects to be a terrorist to discover whether he or she has in his or her possession anything which may constitute evidence that he or she is a terrorist;
- the power under section 43A of the Terrorism Act 2000 for a constable, if he or she reasonably suspects that a vehicle is being used for the purposes of terrorism, to stop and search a vehicle, the driver of a vehicle, a passenger in a vehicle, and anything in or on a vehicle or carried by the driver or a passenger of a vehicle to discover whether there is anything which may constitute evidence that the vehicle is being used for the purposes of terrorism; and

- the power under section 47A of the Terrorism Act 2000 for a constable to stop and search a person or a vehicle in a specified area or place for evidence that a person is or has been concerned in the commission, preparation or instigation of acts of terrorism, or evidence that the vehicle is being used for the purposes of terrorism. The specified area or place must be specified in an authorisation made by a senior police officer and where necessary confirmed by the Secretary of State in accordance with section 47A of, and Schedule 6B to, the Terrorism Act 2000)

2 Commencement

- 2.1 This Code applies to any authorisation or exercise of relevant stop and search powers by a police officer, which commences after midnight on the day the Terrorism Act 2000 (Codes of Practice for the Exercise of Stop and Search Powers) Order 2012 comes into force.

3 The Purpose of this Code is:

- 3.1 To set out the basic principles for the use of powers by police officers under sections 43 and 43A of the Terrorism Act 2000 and the authorisation and use of powers by police officers under section 47A of, and schedule 6B to, the Terrorism Act 2000.
- 3.2 To reflect that changes to the Terrorism Act 2000 powers entirely replace those previously found in sections 44-47 of the Act and are not simply a modification of those provisions. As such, these new provisions carry different criteria for both authorisation and use.
- 3.3 To provide clarity that the threshold for making an authorisation is higher under the new powers and the way in which the powers may be exercised is also different. There is greater circumscription in the use of these powers and the manner in which these powers are to be implemented by the police. Section 47A powers should only be

authorised where other powers or measures are insufficient to deal with the threat and, even where authorised, officers should still consider whether section 47A powers are the most appropriate to use.

3.4 To promote the fundamental principles to be observed by the police and to preserve the effectiveness of, and public confidence in, the use of police powers to stop and search. If these fundamental principles are not observed, public confidence in the use of these powers to stop and search may be affected. Failure to use the powers in the proper manner also reduces their effectiveness. Properly used, stop and search can play an important role in preventing acts of terrorism, protecting life and property, and in bringing terrorists to justice.

3.5 To ensure that the intrusion on the liberty of the person stopped and searched is as limited as possible and to clarify that detention for the purposes of a search should take place at or near the location of the stop and last only as long as necessary. The powers must be exercised in accordance with the obligations of public authorities under the Human Rights Act 1998. The Police Service Northern Ireland (PSNI) must respect individual rights when using powers under the 2000 Act, including the right to liberty, and the right to family and private life. It is imperative that the powers are exercised in a way which ensures the least possible interference with individual rights, where those rights may lawfully be interfered with in prescribed circumstances.

3.6 To set out that those using the powers may be required to justify the use of such powers, in relation both to individual searches and the overall pattern of their activity in this regard, to their supervisory officers, oversight agencies or in court. Any misuse of the powers is likely to be harmful to counter-terrorism policing and lead to mistrust of the police. Officers must also be able to explain their actions to the member of the public searched. The misuse of these powers can lead

to disciplinary action. Proportionate use of the powers can contribute towards the primary purpose of counter terrorism work: ensuring the safety of the public.

- 3.7 To reiterate guidance found in Police and Criminal Evidence (Northern Ireland) Order 1989 Code A (“PACE Code A”) that officers must not search a person, even with his or her consent, where no power to search is applicable. Even where a person is prepared to submit to a search voluntarily, the person must not be searched unless the necessary legal power exists, and the search must be in accordance with the relevant power and the provisions of this Code. The only exception, where an officer does not require a specific power, applies to searches of persons entering sports grounds or other premises carried out with their consent given as a condition of entry.

4 General

- 4.1 This Code governs:
- (a) the exercise by police officers of statutory powers to stop and search a person or a vehicle under section 43 or 43A of the Terrorism Act 2000 with reasonable suspicion that the person is a terrorist or that the vehicle is being used for the purposes of terrorism, respectively; and
 - (b) the authorisation and exercise by police officers of statutory powers to stop and search a vehicle or a person in specified areas or places and specified times contained in section 47A of, and Schedule 6B to, the Terrorism Act 2000, with or without reasonable suspicion that there is anything which may constitute evidence that the vehicle is being used for terrorism or, as the case may be, that the person is a terrorist. In order to authorise the use of the section 47A powers, the authorising officer must reasonably suspect that an act of terrorism will take place. The 2000 Act has been amended following the case of *Gillan and Quinton v UK* where the ECtHR

found that section 44 breached Article 8 of the ECHR because it was capable of being used arbitrarily.

- 4.2 This Code does not apply to other powers of stop and search under other legislation.
- 4.3 This Code of Practice must be readily available at all police stations for consultation by police officers, detained persons and members of the public.
- 4.4 The notes for guidance included are not provisions of this Code, but are guidance to police officers and others about its application and interpretation. Provisions in the annexes to the Code are provisions of this Code.
- 4.5 This Code of Practice is issued under section 47AB of the Terrorism Act 2000.
- 4.6 The effect of this Code is set out in section 47AE of the Terrorism Act 2000.
- 4.7 Constables must have regard to the Code and the Code is admissible in criminal or civil proceedings (although a breach of the Code itself does not make a person liable to any such proceedings).

5 General principles governing stop and search

- 5.1 Powers to stop and search must be used fairly, responsibly, with respect for people being searched and without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, disability or whether or not they have dependents. At all times PSNI should have regard to their obligations under sections 75 and 76 of the Northern Ireland Act 1998 (the duties

not to discriminate and to promote equality of opportunity and good relations).

- 5.2 The Terrorism Act 2000 powers must not be used to stop and search for reasons unconnected with terrorism.
- 5.3 The intrusion on the liberty of the person stopped or searched must be as brief as possible and detention for the purpose of search must take place at or near the location of the place where the person or vehicle is stopped.
- 5.4 If these fundamental principles are not observed the use of powers to stop and search may be drawn into question. Failure to use the powers in the proper manner reduces their effectiveness and may expose officers to legal challenge. Stop and search can play an important role in the detection and prevention of crime, and using the powers fairly makes them more effective.
- 5.5 The primary purpose of stop and search powers under Part V of the Terrorism Act 2000 is to protect the public by enabling police officers to prevent and detect acts of terrorism.

6 Reasonable grounds for suspicion

- 6.1 The powers covered by this Code of Practice require reasonable suspicion before they can be exercised, or before an authorisation can be made permitting searches without reasonable suspicion.
- 6.2 Reasonable grounds for suspicion depend on the circumstances in each case. There must be an objective basis for that suspicion based on facts, information, and/or intelligence which are relevant to:
 - in the case of searches under section 43 of the Terrorism Act 2000, to the likelihood that the person is a terrorist;

- in the case of searches under section 43A of the Terrorism Act 2000, to the likelihood that the vehicle is being used for the purposes of terrorism; or
- when authorising the section 47A powers that can be exercised without reasonable suspicion, the likelihood that an act of terrorism will take place.

6.3 Reasonable suspicion can never be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour by the person concerned. For example, a person's race, age, appearance, or the fact that the person is known to have a previous conviction, cannot be used alone or in combination with each other as the reason for searching that person. Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity. A person's religion cannot be considered as reasonable grounds for suspicion and should never be considered as a reason to stop or stop and search an individual.

6.4 Reasonable suspicion can sometimes exist without specific information or intelligence and on the basis of some level of generalisation stemming from the behaviour of a person. For example, for the purposes of section 43 of the Terrorism Act 2000, suspicion that a person is a terrorist may arise from the person's behaviour at or near a location which has been identified as a potential target for terrorists.

6.5 However, reasonable suspicion should normally be linked to credible and current intelligence or information, such as information describing an article being carried, a suspected offender, or suspected terrorist activity. Searches based on credible and current intelligence or information are more likely to be effective. Targeting searches in a particular area increases their effectiveness and minimises inconvenience to law-abiding members of the public. It also helps in

justifying the use of searches both to those who are searched and to the general public. This does not however prevent stop and search powers being exercised in other locations where such powers may be lawfully exercised.

- 6.6 Searches are more likely to be effective, legitimate, and secure public confidence when reasonable suspicion is based on a range of factors. The overall use of these powers is more likely to be effective when up to date and credible intelligence or information is communicated to officers and they are well-informed about the threat in their local area.

7 Authorisations under section 47A of the Terrorism Act 2000

- 7.1 A senior police officer of the rank of Assistant Chief Constable or above may authorise constables to use the following powers to stop and search, in relation to a specified area or place, without reasonable suspicion:

- (a) under section 47A(2) of the Terrorism Act 2000, to give a constable in uniform power to stop and search any vehicle, its driver, any passenger in the vehicle and anything in or on the vehicle or carried by the driver or any passenger; and
- (b) under section 47A(3) of the Terrorism Act 2000, to give a constable in uniform power to stop and search any pedestrian and anything carried by the pedestrian.

- 7.2 An authorisation may authorise searches under either section 47A(2) or section 47A(3) of the Terrorism Act 2000.

- 7.3 In order to make an authorisation under section 47A, allowing constables to stop and search without reasonable suspicion, the senior police officer must **reasonably suspect that an act of terrorism will take place, and reasonably consider that the:**

- (a) authorisation is necessary to prevent such an attack;
- (b) specified area is no greater than is necessary to prevent such an attack; and
- (c) duration of the authorisation is no longer than is necessary to prevent such an attack.

7.4 Terrorism is defined by section 1 of the Terrorism Act 2000 as the use or threat of action which is:

- Designed to influence the government or an international governmental organisation, or intimidate the public or a section of the public, and
- made for the purpose of advancing a political, religious, racial or ideological cause, and
- Where the action used or threatened:
 - involves serious violence against a person or serious damage to property;
 - endangers a person's life, other than that of the person committing the action;
 - creates a serious risk to the health or safety of the public or a section of the public; or
 - is designed seriously to interfere with or seriously to disrupt an electronic system.

7.5. Where the use or threat of such action involves the use of firearms or explosives, it is terrorism whether or not it is designed to influence the government or an international governmental organisation or intimidate the public or a section of the public.

7.6 An act of terrorism may be a terrorist attack, but it may also include acts which may lead to an attack.

- 7.7 An authorisation may relate to a single suspected act of terrorism, but where there are multiple threats it may be appropriate for these to be considered together and a single authorisation made that takes into account all relevant information. Such an authorisation could relate to multiple threats:
- by different terrorist groups in the same or different areas;
 - by a single terrorist group in the same or different areas;
 - occurring at the same time, or over a short period of time; and/or
 - that are linked in some other way (for example, all relating to a particular event).
- 7.8 The powers should therefore **not** be authorised solely on the basis that there is a general high threat from terrorism. However, this may be taken into account when deciding whether to make an authorisation, especially where intelligence about an attack is limited in terms of the potential target or attack method. An authorisation should not be given on the basis that the use of the powers provides public reassurance or that the powers are a useful deterrent or intelligence-gathering tool.
- 7.9 An authorising police officer must also be satisfied that the Terrorism Act 2000 powers are ‘necessary’ to prevent such an act of terrorism and that only the use of these powers will be sufficient to meet the perceived threat.
- 7.10 He or she should also consider whether section 47A is the most appropriate power to use in the circumstances. In determining whether or not the use of the powers is necessary the senior police officer must take into account not just available information on the threat from terrorism, but also:
- the proportionality of the use of without reasonable suspicion search powers;

- that searches (if authorised) may be exercised only for the purpose of discovering whether there is anything that may constitute evidence that the vehicle being searched is being used for the purposes of terrorism, or the person being searched is or has been concerned in the commission, preparation or instigation of acts of terrorism;
- the suitability of other search powers including those that require reasonable suspicion;
- the safety of the public and the safety of officers;
- the risk of serious damage to property.

7.11 When giving an authorisation, the officer must specify the geographical area in which the power may be used, and the time and date that the authorisation ends (up to a maximum of 14 days from the time the authorisation was given). Both the duration and the geographical extent of an authorisation must be no greater than is necessary to prevent an act of terrorism and based on an assessment of the available information.

7.12 In determining what is necessary in terms of duration and geography the senior police officer should make an assessment in the round about what is the most appropriate operational response, taking into account all relevant factors. Relevant factors would always include information about the particular threat and suspected terrorist activity (and any known information about its likely scope and duration). It could also include but need not be restricted to:

- known terrorist tactics and capabilities;
- recent terrorist activity, including (but not limited to) acts of terrorism;
- particular sites or events that are deemed to be “high risk” or vulnerable;
- the possibility that terrorists could change their target or tactics.

- 7.13 An authorisation can be granted to apply to all or part of a police area, but only if the identified threat makes it necessary. Police areas cover inland waters such as lakes, reservoirs and rivers and extend to the low water line at the coast. Police areas do not cover the sea below the low water line. An authorisation can cover any internal waters adjacent to the area of the authorisation. An authorisation may also be granted that only covers a specified area of internal waters.
- 7.14 In principle, section 47A enables an authorisation to cover the whole of Northern Ireland, and to last for a maximum of 14 days. As with all authorisations, any authorisation for the use of the powers that extends to the whole of Northern Ireland or for the maximum 14 days must be justified in terms of its necessity in relation to the particular threat. The terrorist threat to the public may not in itself be sufficient to justify extension throughout Northern Ireland. Where different areas or places are specified within one authorisation, different time periods may be specified in relation to each of these areas or places. The time period necessary for each area will need to be considered and justified. However, where an authorisation responds to multiple threats in different places across a period of time it is more likely that an authorisation for the maximum area and period of time would meet the necessity test. In other cases, separate and tailored authorisations for a number of threats will be appropriate.
- 7.15 The authorising officer should consider how the powers are intended to be used. This may include the use of vehicle checkpoints, stops and searches of individuals entering, leaving or at particular sites in circumstances that relate to an assessed threat. The authorising officer should indicate whether officers will be instructed to conduct stops and searches on the basis of particular indicators. (e.g. behavioural indicators, types of items carried or clothes worn, types of vehicles etc). If the powers are to be exercised on the basis of an indicator, the indicator should be specified.

- 7.16 An authorisation may be given orally at first, but it must be confirmed in writing by the officer who gave it as soon as reasonably practicable. The officer giving an authorisation under section 47A(1) must cause the Secretary of State to be informed, as soon as reasonably practicable, that such an authorisation has been given. An authorisation which is not confirmed by the Secretary of State within 48 hours of its having been given, shall have effect up until the end of that 48 hour period or the end of the period specified in the authorisation, or at the time at which the Secretary of State identifies the authorisation to be cancelled (whichever is the earlier).
- 7.17 Where a single authorisation deals with multiple threats a senior police officer should review it as soon as is reasonably practicable after any significant change to assess whether or not the use of the powers as authorised remains necessary to prevent an act of terrorism, or if amendment is required. If the authorising officer considers there is a significant change in the nature of the particular threat or threats, or the authorising officer's understanding of it has changed, it may be appropriate to seek a new authorisation or to cancel a previous authorisation. If the authorising officer no longer holds the reasonable suspicion upon which he originally made an authorisation, he must cancel the authorisation immediately and inform the Secretary of State.
- 7.18 The following information should be provided to the Secretary of State in support of an authorisation:
- 7.19 **Intelligence Picture:** The authorising officer should provide a detailed account of the intelligence which has given rise to reasonable suspicion that an act of terrorism will take place. This should include classified material where it exists.
- 7.20 **Geographical Extent:** Detailed information should be provided to identify the geographical area(s) or place(s) covered by the authorisation and why it is no wider than is necessary. If helpful in

describing the area covered by the authorisation, maps may be included.

- 7.21 If an authorisation is one which covers a similar geographical area to one which immediately preceded it, the authorisation must be based on a fresh assessment of the available information. If previous information remains relevant there should be a confirmation that it has been reassessed and is considered relevant and why.
- 7.22 **Duration:** The **maximum** period for an authorisation is 14 days, and authorisations should not be made for the maximum period unless it is necessary to do so based on the intelligence about the particular threat. Justification should be provided for the length of an authorisation, setting out why that time period has been sought. If an authorisation is one which is similar to another immediately preceding it, information should be provided as to why a new authorisation is justified (for example, why the period of the initial authorisation was not sufficient). However, this is not necessary if an authorisation is similar in duration and extent to a preceding authorisation, but relates to different threat information.
- 7.23 The duration and the geographical extent should not be greater than is necessary or justified to prevent the act or acts of terrorism which rendered the authorisation necessary.
- 7.24 **Briefing Provided:** Information should be provided which demonstrates that all officers involved in exercising section 47A powers receive appropriate briefing on the use of the powers, including the provisions of this Code and the broad reason for the use of the powers.
- 7.25 Following notification of the authorisation, the Secretary of State may:
- (i) cancel the authorisation with immediate effect or with effect from such other time as he or she may direct;

- (ii) confirm the authorisation but for a shorter period than that specified in the authorisation or for a more restricted geographical area; or;
- (iii) confirm the authorisation as given.

7.26 The legislation provides that once an authorisation has expired, a new authorisation may be made. A new authorisation covering the same or substantially the same areas or places as a previous authorisation may be made if:

- a) the intelligence which informed the initial authorisation has been subject to fresh assessment and the officer giving the authorisation is satisfied that the test for authorisation is still met on the basis of that assessment; and/or
- b) there is information of a new or different threat and the officer giving the authorisation is satisfied that an authorisation covering the same or substantially the same areas or places as a previous authorisation is justified.

Where a successive authorisation is given, it may be given before the expiry of the existing authorisation, but that existing authorisation should be cancelled.

7.27 If a fresh assessment of the intelligence supports a revision of the area(s) or place(s) authorised, or a shortening of the duration of any part of the authorisation, then this may be done.

7.28 An authorisation renewed continuously without justification is not permitted under these provisions. The authorising officer must consider afresh the justification for the authorisation of stop and search powers.

Information for Authorising Officers

- 7.29 Authorisations under section 47A of the Terrorism Act 2000 may only be given by officers of at least the rank of Assistant Chief Constable. Authorising officers must be either substantive or temporarily promoted into the qualifying rank. Officers who are acting in the rank may not grant authorities.
- 7.30 An authorisation may be given orally or in writing. If given orally, the authorisation must be confirmed in writing as soon as possible. All authorisations must include the time and date they were given and the time or date of expiry (or times or dates where more than one area is authorised and where applicable). This must be no later than 14 days from the date on which the authorisation was granted (although the maximum 14 days may only be authorised where necessary to prevent the particular threat(s)). An authorisation must specify an end time no later than 23.59hrs on the 14th day after it was given (or if only the date is given, that date must be the 14th day – and the time will be taken as 23:59hrs on that date).
- 7.31 For example, if an authorisation is made at 08.00hrs on the 1st November, the specified end time must be no later than 23.59hrs on the 14th November.
- 7.32 The authorising officer must inform the Secretary of State as soon as reasonably practicable that an authorisation under section 47A of the Terrorism Act 2000 has been made.
- 7.33 Authorisations begin at the point at which they are signed, or when they are given orally by the authorising officer. The written authorisation, or written confirmation of an oral authorisation, must state the time at which the authorising officer gave it. In the case of a

new authorisation, an authorisation can be given before the expiry of the previous one if necessary, but the previous authorisation should be cancelled.

- 7.34 When an authorisation under section 47A of the Terrorism Act 2000 has been granted, the authorising officer should ensure that police officers who will take part in any subsequent stop and search operations are aware of it. The authorising officer should ensure that relevant police officers are briefed on the fact of the authorisation, its intended use and the section 47A of the Terrorism Act 2000 powers. Officers should also be briefed on the availability of other powers and the circumstances in which these may be more appropriate.
- 7.35 Authorisations remain lawful for up to 48 hours without Secretary of State approval, unless they have been cancelled by the Secretary of State. If the authorisation is not confirmed within a 48 hour period, it ceases to have effect at the end of the 48 hours or earlier if the authorisation period is less than 48 hours. If confirmed, the authorisation remains lawful until the expiry time specified by the authorising officer or an earlier time substituted by the Secretary of State. If the authorisation is cancelled at any time, it ceases to have effect at the time identified by the Secretary of State.
- 7.36 A police officer of the appropriate rank may authorise the use of section 47A powers for less than 48 hours. There is, however, a statutory requirement that the Secretary of State is informed about an authorisation – regardless of its duration – as soon as is reasonably practicable after it has been given. The authorising officer should inform the Secretary of State that he intends to make such an authorisation in advance of doing so, unless this is not possible because of the urgent nature of the threat. The authorising officer should also ensure that the supporting details for such an authorisation are made available to the Secretary of State in the same way as for an authorisation lasting for longer than 48 hours. The Secretary of State

may consider the authorisation prior to its expiry and may confirm or cancel it.

- 7.37 Continuous use of 48 hour long authorisations, whereby the powers could remain in force on a “rolling” basis without requiring confirmation by the Secretary of State, is not justifiable and would constitute an abuse of the provisions.

8 Briefing and Tasking

- 8.1 Officers should use the information provided in a briefing to influence their decision to stop and search an individual. Officers should also be fully briefed on and aware of the differences between searches under sections 43, 43A and 47A of the Terrorism Act 2000 and the circumstances in which it is appropriate to use these powers.
- 8.2 These Terrorism Act 2000 powers of stop and search should only be used by officers who have been provided with information about their use. This information may be provided by training or briefing.
- 8.3 Officers should be reminded that other powers of stop and search (including powers exercisable on reasonable suspicion) may be more appropriate to use.
- 8.4 Officers should be reminded of the need to record information and provide anyone who is stopped and searched, or whose vehicle is stopped and searched, with written confirmation that the stop and search took place and details of the powers used. Accurate recording of information is essential in order to monitor the use of the powers, safeguard against misuse and provide individuals with information about the powers which have been used.

- 8.5 The briefing should make officers aware of relevant current information and intelligence including current threats to relevant locations. Briefings should be as comprehensive as possible in order to ensure officers understand the nature and justification of the operation (which will in turn help officers to understand what evidence they are looking for in the course of a search), while recognising that the narrow circumstances in which section 47A will be used mean that it may not be appropriate to communicate highly sensitive intelligence to all officers.
- 8.6 Where officers are using powers under the Terrorism Act 2000, they should be reminded of the purpose for exercising those powers i.e. only for the purpose of discovering whether there is anything that may constitute evidence that the vehicle being searched is being used for the purposes of terrorism, or the individual being searched is a terrorist. The purpose of the search must therefore be to look for items which connect the vehicle or individual being searched to terrorism, rather than generally for items which could be used (e.g. by another individual in different circumstances) in connection with terrorism. However, if during the course of a search, items are discovered which constitute evidence of other crimes, they may be seized using Article 21 of the Police and Criminal Evidence (Northern Ireland) Order 1989 or other appropriate powers. If an officer decides, as a result of items found or other matters arising during a search under Terrorism Act powers to exercise powers under other legislation, he or she should inform the person of this fact.
- 8.7 Briefings should make officers aware of the basis for the use of stop and search powers under the Terrorism Act 2000. Officers should be reminded of the importance of providing the public with as much information as possible about why the stop and search is being undertaken. The following list can help officers to explain the use of the powers when dealing with the public:

- The power that is being used;
- That the powers conferred by section 43 and 43A require reasonable suspicion;
- That if authorised, the powers conferred by 47A can be exercised whether or not there is reasonable suspicion;
- What the operation is seeking to do, e.g., to prevent terrorist activity in response to a specific threat; and
- What entitlements the person has.

8.8 In order to demonstrate that the powers are used appropriately and proportionately, the briefing process must be robust and auditable. All officers involved in the process should be reminded that they are fully accountable in law for their own actions.

8.9 Officers should be given clear instructions about where and when they should use their Terrorism Act 2000 powers. If a section 47A authorisation is in place, officers should be clearly tasked so that the power is used appropriately and proportionately.

8.10 There may be exceptional circumstances where it is impractical to brief officers before they are deployed. Where this occurs, supervisors should provide officers with a briefing as soon as possible after deployment.

9 Conduct of searches

9.1 The powers under sections 43, 43A and 47A of the Terrorism Act 2000 allow a constable to conduct searches in the following circumstances:

- where a constable reasonably suspects a person to be a terrorist he or she can stop and search that person to discover whether he or she has in his possession anything which may constitute evidence that he or she is a terrorist (section 43);

- a constable, if he or she reasonably suspects that a vehicle is being used for the purposes of terrorism, may stop and search a vehicle, the driver of a vehicle, a passenger in a vehicle, and anything in or on a vehicle or carried by the driver or a passenger of a vehicle to discover whether there is anything which may constitute evidence that the vehicle is being used for the purposes of terrorism (section 43A); and
- where an authorisation is in place a constable may stop and search a person or a vehicle in a specified area or place for evidence that a person is or has been concerned in the commission, preparation or instigation of acts of terrorism, or (as the case may be) evidence that the vehicle is being used for the purposes of terrorism (section 47A).

9.2 However, the above conditions would not prevent a search being carried out under other powers if, in the course of exercising these powers, the officer formed reasonable grounds for suspicion.

9.3 Where an authorisation is in place enabling searches under Terrorism Act 2000 section 47A, police officers should consider whether other powers of stop and search (including powers exercisable on reasonable suspicion) may be more appropriate to use.

9.4 An officer may detain the person concerned in order to carry out a search. Before carrying out a search the officer may ask questions about the person's behaviour or presence. As a result of questioning the detained person, reasonable grounds for suspicion necessary to search that person under section 43 or 43A may be confirmed or, because of a satisfactory explanation, be eliminated. Questioning may also reveal reasonable grounds to suspect the possession of a different kind of unlawful article from that originally suspected. Reasonable

grounds for suspicion however cannot be provided retrospectively by such questioning during a person's detention or by refusal to answer any questions put.

- 9.5 If, as a result of questioning before a search, or other circumstances which come to the attention of the officer, the officer does not have reasonable grounds for suspecting that an article is being carried of a kind for which there is a power to stop and search and no other lawful power to search without reasonable suspicion is available, no search may take place. In the absence of any other lawful power to search or detain, the person is free to leave at will and must be so informed.
- 9.6 Where a person or vehicle is being searched without reasonable suspicion under section 47A there must be a reason why that person has been selected for search. Reasons could include but are not limited to:
- that something in the behaviour of a person or the way a vehicle is being driven has given cause for concern;
 - the terms of a briefing provided;
 - the answers made to questions about the person's behaviour or presence have given cause for concern.
- 9.7 There is no power to stop or detain a person in order to find grounds for a search (though this does not prevent police officers exercising other lawful powers to stop and question a person). Police officers have many encounters with members of the public which do not involve detaining people against their will.
- 9.8 All Terrorism Act 2000 stops and searches must be carried out with courtesy, consideration and respect for the person concerned. This has a significant impact on public confidence in the police. Every

reasonable effort must be made to minimise the embarrassment that a person being searched may experience.

- 9.9 The co-operation of the person to be searched must be sought in every case, even if the person initially objects to the search. A forcible search may be made only if it has been established that the person is unwilling to co-operate or resists. Reasonable force may be used as a last resort if necessary to conduct a search or to detain a person or vehicle for the purposes of a search.
- 9.10 The length of time for which a person or vehicle may be detained must be the minimum required to reasonably permit the search to be carried out. In the case of searches under section 47A officers may make any search to look for items for which they are empowered to search.
- 9.11 The search should ideally be carried out at or nearby the place where the person or vehicle was first detained, unless it is not reasonably practicable to do so.
- 9.12 Under powers contained in Terrorism Act 2000 there is no power to require a person to remove any clothing in public other than an outer coat, jacket, headgear or gloves, except under paragraph 1 of Schedule 6B to the Terrorism Act 2000 (which empowers a constable conducting a search under section 47A of that Act to require a person to also remove footwear in public). A search in public of a person's clothing which has not been removed must be restricted to superficial examination of outer garments. This does not, however, prevent an officer from placing his or her hand inside the pockets of the outer clothing, or feeling round the inside of collars, socks and shoes if this is reasonably necessary in the circumstances to look for the object of the search or to remove and examine any item reasonably suspected to be the object of the search. For the same reasons, a person's hair may also be searched in public.

- 9.13 Some people customarily cover their heads for religious reasons. Where there may be religious sensitivities about ordering the removal of such an item, the officer should permit the item to be removed out of public view. Where practicable, the item should be removed in the presence of an officer of the same sex as the person and out of sight of anyone of the opposite sex.
- 9.14 Where it is considered necessary to conduct a more thorough search (e.g. by requiring a person to take off a T-shirt), this should be done, where practicable, out of public view. For example, the search may be conducted in a police van or police station if there is one nearby. Any search involving the removal of more than an outer coat, jacket, gloves, headgear or footwear, or any other item concealing identity, should preferably be made by an officer of the same sex as the person searched, although this is not a requirement of the legislation.

Steps to be taken prior to a search under the Terrorism Act 2000

- 9.15 Before any search of a detained person or attended vehicle takes place the officer must take reasonable steps to give the person to be searched or in charge of the vehicle the following information:
- (a) that they are being detained for the purposes of a search;
 - (b) the officer's warrant or other identification number shall be given and the name of the police station to which the officer is attached;
 - (c) the legal search power which is being exercised; and
 - (d) a clear explanation of:-
 - (i) the purpose of the search in terms of the article or articles for which there is a power to search; and

- (ii) in the case of a search under section 47A the nature of the power and of any necessary authorisation and the fact that it has been given.

- 9.16 Stops and searches under Terrorism Act 2000 section 47A may only be undertaken by a constable in uniform.
- 9.17 Before the search takes place the officer must inform the person (or the owner or person in charge of the vehicle that is to be searched) of his or her entitlement to a copy of the record of the search, including his entitlement to a record of the search if an application is made within 12 months, if it is wholly impracticable to make a record at the time. If a record is not made at the time the person should also be told how a copy can be obtained.
- 9.18 If the person to be searched, or in charge of a vehicle to be searched, does not appear to understand what is being said, the officer must take reasonable steps to bring the information regarding the person's rights to his or her attention. If the person is deaf or cannot understand English and is accompanied by someone, then the officer must try to establish whether that person can interpret or otherwise help the officer to give the required information.
- 9.19 When undertaking any search, officers should always consider their own safety and the health and safety of others.
- 9.20 Police officers can stop and search someone taking photographs just as they can stop and search any other member of the public in the proper exercise of their discretion in accordance with the legislation and provisions of this Code. However an authorisation in itself does not prohibit the taking of photographs or digital images.

- 9.21 Taking photographs is not illegal, unless the person involved is engaged in hostile reconnaissance. If officers reasonably suspect that photographs are being taken as part of hostile terrorist reconnaissance, a search under section 43 or an arrest under section 41 should be considered. Film and memory cards may be seized as part of the search if the officer reasonably suspects they are evidence that the person is a terrorist, or a vehicle is being used for the purposes of terrorism, but officers do not have a legal power to delete images or destroy film. Cameras and other devices should be left in the state they were found and forwarded to appropriately trained staff for forensic examination. The person being searched should never be asked or allowed to turn the device on or off because of the danger of evidence being lost or damaged.
- 9.22 Individuals should not be prevented from photographing police officers under terrorism stop and search powers. Seizures of cameras etc. may only be made, following a search, where the officer reasonably suspects that they may constitute evidence that the person is a terrorist or that the vehicle is being used for the purposes of terrorism as the case may be.

10 Recording requirements

- 10.1 An officer who has carried out a search must make a record unless it is not practicable to do so, on account of the numbers to be searched or for some other operational reason, such as situations involving public disorder. The record must be completed as soon as practicable, preferably on the spot, unless circumstances (e.g. other immediate duties or very bad weather) make this impracticable.
- 10.2 Except in the circumstances set out in paragraph 9.17, a copy of a record made at the time must be given immediately to the person who has been searched. In all cases the officer must ask for the name, address and date of birth of the person searched, but there is no

obligation on a person to provide these details and there is no power of detention if the person is unwilling to do so, unless they are obliged to do so under other relevant legislation.

10.3 Where, in accordance with paragraph 9.17, a unique reference number is to be given instead of a copy of the record, this reference must be given immediately to the person who has been searched. It must state how the full record can be accessed. When providing such a reference, the officer must inform the person that the full record is available and how the full record can be accessed. The person may request a copy within 12 months from the date of the search. The full record must comply with paragraph 10.4 of this Code.

10.4 The following information must always be included in the record of a search even if the person does not wish to provide any personal details:

- (i) name of the person searched, or (if it is withheld) a description;
- (ii) when a vehicle is searched, its registration number;
- (iii) date, time, and place that the person or vehicle was first detained;
- (iv) date, time and place the person or vehicle was searched (if different from (iii));
- (v) purpose of the search;
- (vi) grounds for making it, or in the case of those searches mentioned in paragraph 7.1(a) and (b), the nature of the power and of any necessary authorisation and the fact that it has been given;
- (vii) its outcome (e.g. arrest or no further action);
- (viii) a note of any injury or damage to property resulting from it; and
- (ix) the officer's warrant or other identification number and the name of the police station to which the officer is attached.

- 10.5 The names of police officers are not required to be shown on the search record or any other record required to be made under this Code.
- 10.6 A record is required for each person and each vehicle searched. However, if a person is in a vehicle and both are searched, and the object and grounds of the search are the same, only one record need be completed.
- 10.7 In the case of a search with reasonable suspicion under section 43 or section 43A, the record of the grounds for making a search must, briefly but informatively, explain the reason for suspecting the person concerned, by reference to the person's behaviour and/or other circumstances.
- 10.8 Where officers detain an individual with a view to performing a search, but the search is not carried out due to grounds for suspicion being eliminated as a result of questioning the person detained, or the officer being otherwise satisfied that a search is not necessary, a record must still be made in accordance with the procedure outlined above.
- 10.9 After searching an unattended vehicle, or anything in or on it, an officer should, where practicable, leave a notice in it (or on it, if things on it have been searched without opening it) recording the fact that it has been searched.
- 10.10 The notice must include the name of the police station to which the officer concerned is attached and state where a copy of the record of the search may be obtained and where any application for compensation should be directed.
- 10.11 The vehicle must if practicable be left secure.

- 10.12 When an officer makes a record of the stop electronically and if the officer is able to provide a copy of the record at the time of the stop and search, he or she must do so. This means that if the officer has or has access to a portable printer for use with the electronic recording equipment, then a copy of the record must be provided. Otherwise a unique reference number and guidance on how to obtain a full copy of the search should be provided to the person searched.

11 Avoiding Discrimination

- 11.1 Racial or religious profiling is the use of racial, ethnic, religious or other stereotypes, rather than individual behaviour or specific intelligence, as a basis for making operational or investigative decisions about who may be involved in criminal activity.
- 11.2 Officers should take care to avoid any form of racial or religious profiling when selecting people to search under section 47A powers. Profiling in this way may amount to an act of unlawful discrimination, as would discrimination on the grounds of any protected characteristics.
- 11.3 To avoid the kinds of discrimination referred to in paragraph 5.1, great care should be taken to ensure that the selection of people is not based solely on ethnic background, perceived religion or other protected characteristics. A person's appearance or ethnic background will sometimes form part of a potential suspect's description, but a decision to search them under section 47A should be made only if that description arises from evaluated intelligence. Profiling people from certain ethnicities or religious backgrounds may also lose the confidence of communities.

12 Monitoring and supervising the use of stop and search powers

- 12.1 Supervising officers must ensure in the use of stop and search powers that there is no evidence of them being exercised on the basis of stereotyped images or inappropriate generalisations. Supervising officers should satisfy themselves that the practice of officers under their supervision in stopping, searching and recording is fully in accordance with this Code. Supervisors must also examine whether the records reveal any trends or patterns which give cause for concern, and if so take appropriate action to address this.
- 12.2 Senior officers with area or service wide responsibilities must also monitor the general use of stop and search powers and should take action if they do not feel the powers are being used appropriately.
- 12.3 Supervision and monitoring must be supported by the compilation of comprehensive statistical records of stops and searches at service, area and local level. Any apparently disproportionate use of the powers by particular officers or groups of officers or in relation to specific sections of the community should be identified and investigated.

13 Oversight and community engagement

- 13.1 The appropriate use and application of these powers should be overseen and monitored by the Northern Ireland Policing Board.
- 13.2 District Commanders should engage with their Policing and Community Safety Partnerships and Independent Advisory Groups (IAGs) as appropriate.
- 13.3 Statistics should be regularly published regarding the use of Stop and Search by the Police Service of Northern Ireland.

Notes for Guidance

Officers exercising stop and search powers

1. This Code does not affect the ability of an officer to speak to or question a person in the ordinary course of the officer's duties without detaining the person or exercising any element of compulsion. It is not the purpose of the Code to prohibit such encounters between the police and the community with the co-operation of the person concerned and neither does it affect the principle that all citizens have a duty to help police officers to prevent crime and discover offenders. When a police officer is trying to discover whether, or by whom, an offence has been committed he or she may question any person from whom useful information might be obtained, subject to the restrictions imposed by PACE Code C. A person's unwillingness to reply does not alter this entitlement, but in the absence of a power to arrest, or to detain in order to search, the person is free to leave at will and cannot be compelled to remain with the officer.
2. In some circumstances preparatory questioning may be unnecessary, but in general a brief conversation or exchange will be desirable not only as a means of avoiding unnecessary searches, but to explain the grounds for the stop/search, to gain co-operation and reduce any tension there might be surrounding the stop/search.
3. Where a person is lawfully detained for the purpose of a search, but no search in the event takes place, the detention will not thereby have been rendered unlawful.
4. Some people customarily cover their heads or faces for religious reasons. Where there may be religious sensitivities about ordering the removal of such an item, the officer should permit the item to be removed out of public view. Where practicable, the item should be

removed in the presence of an officer of the same sex as the person and out of sight of anyone of the opposite sex.

5. A search of a person in public should if deemed necessary be undertaken as soon as possible.
6. A person may be detained under a stop and search power at a place other than where the person was first detained, only if that place, be it a police station or elsewhere, is nearby. The term 'nearby' means close at hand to the place where the person or vehicle was stopped. In the case of a person, for example, this could be a shop doorway or other similar place of shelter, or a closed police van at the scene. It does not mean that a person or vehicle should be taken from the scene to a police station for the search to take place. Such a place should be located within a reasonable travelling distance using whatever mode of travel (on foot or by car) is appropriate. This applies to all searches under stop and search powers, whether or not they involve the removal of clothing or take place in or out of public view.
7. A search in the street itself should be regarded as being in public view, even though it may be empty at the time a search begins. Although there is no power to require a person to do so, there is nothing to prevent an officer from asking a person voluntarily to remove more than an outer coat, jacket, gloves or headgear (and footwear under paragraph 1 of Schedule 6B to the Terrorism Act 2000) in public.

Recording

9. Where a stop and search is conducted by more than one officer the identity of all the officers engaged in the search must be recorded on the record. Nothing prevents an officer who is present but not directly involved in searching from completing the record during the course of the encounter.

10. Where a vehicle has not been allocated a registration number (e.g. a rally car or a trials motorbike) that part of the requirement does not apply.
11. It is important for monitoring purposes to specify under what power the authority for exercising a stop and search power was made.
12. In situations where it is not practicable to provide a written record or a full copy of an electronic record or an electronic receipt of the stop and search at that time, the officer should consider providing the person with details of the station to which the person may attend for a record. This may take the form of a simple business card, adding the date of the stop and search.
13. An officer with an electronic recording device may be carrying a paper version of the record for use as a contingency in the event of a technical breakdown. In these circumstances, where the officer is able to make an electronic record, there would be no requirement to provide a written record.



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